

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DORIS M. REISIGEL
Claimant

VS.

DILLON COMPANIES, INC.
Respondent
Self-Insured

)
)
)
)
)
)
)

Docket No. 201,044

ORDER

Respondent appeals from an Award entered by Administrative Law Judge Nelsonna Potts Barnes on November 20, 1997.

APPEARANCES

Claimant appeared by her attorney, Steven R. Wilson of Wichita, Kansas.
Respondent appeared by its attorney, Scott J. Mann of Hutchinson, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has reviewed the record listed in the Award and has adopted the stipulations listed in the Award.

ISSUES

The sole issue on appeal is the nature and extent of claimant's disability. The Administrative Law Judge awarded benefits for a general body disability of 20 percent. Respondent contends that the Administrative Law Judge did not properly deduct for preexisting impairment under K.S.A. 44-501.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Award by the Administrative Law Judge should be affirmed.

The current claim is for bilateral carpal tunnel syndrome. In a prior claim, claimant was awarded benefits for a disability in both thumbs. Benefits were paid based upon a rating by Dr. Jay Stanley Jones who converted two upper extremity ratings to a whole body rating of 8 percent. In the current case, Dr. Jones rates claimant's impairment as

24 percent of the body as a whole. Respondent contends that the 24 percent should be reduced by the previous 8 percent to arrive at an award of 16 percent under K.S.A. 44-501.

The Appeals Board concludes that the Administrative Law Judge properly deducted for the preexisting impairment. Dr. Jones previously rated the impairment at 8 percent of the whole body. He also testifies, however, that if he gave credit for the prior thumb injuries in the 24 percent, he would only reduce the 24 percent by 4 percent to give her 20 percent for the carpal tunnel condition alone.

K.S.A. 44-501 requires that an award be reduced by the amount of preexisting impairment:

The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased disability. Any award of compensation shall be reduced by the amount of functional impairment determined to be preexisting.

It appears from Dr. Jones' testimony that he considered the preexisting condition to represent only 4 percent of the total 24 percent rating he arrived at after claimant developed bilateral carpal tunnel syndrome. The Appeals Board considers the deduction of 4 percent and Award for 20 percent to be appropriate under the evidence and consistent with the applicable statute.

The Appeals Board hereby adopts the findings and conclusions stated by the Administrative Law Judge in her Award.

AWARD

WHEREFORE, the Appeals Board finds that the Award of Administrative Law Judge Nelsonna Potts Barnes, dated November 20, 1997, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

Steven R. Wilson, Wichita, KS
Scott J. Mann, Hutchinson, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director